

1 windows are the only means through which its claimed efficiencies  
2 can be accomplished. Where, however, it is obvious that the  
3 identified goals could also be accomplished without these  
4 exclusivity provisions, substantial issues of material fact have  
5 been raised by Plaintiff.<sup>19</sup>

6 Justice Brandeis' admonition is no less forceful today  
7 then it was when written. Indeed, as the FCC's Interim Report  
8 indicates, even after many months in gathering testimony and data  
9 in response to its Congressional mandate on this very issue, the  
10 FCC intends to seek additional information in order to enable it to  
11 appropriately apply the Rule of Reason test to these preclusive  
12 contracts.<sup>20</sup> Yet defendant PAC-10 would have this Court rule in

---

13  
14 <sup>19</sup> As Justice Brandeis stated in the seminal case of Board  
15 of Trade of Chicago v. United States, 246 U.S. 231  
16 (1918): "the true test of legality is whether the  
17 restraint imposed is such as merely regulates and  
18 perhaps thereby promotes competition or whether it is  
19 such as may suppress or even destroy competition. to  
20 determine that question the court must ordinarily  
21 consider the facts peculiar to the business to which  
22 the restraint is applied; its condition before and  
23 after the restraint was imposed; the nature of the  
24 restraint and its effect, actual or probable. The  
25 history of the restraint, the evil believed to exist,  
26 the reason for adopting the particular remedy, the  
27 purpose or end sought to be obtained, are all relevant  
28 facts. Board of Trade of Chicago, 246 U.S. at 238.

23 <sup>20</sup>As the Interim Report states: "In particular, we will  
24 seek information concerning the appropriate definition of the  
25 relevant product and geographic markets, the degree of market  
26 power possessed by the programmers, and whether preclusive  
27 contracts permit the achievement of efficiencies that could not  
28 readily be achieved in another manner. Such information will  
enable us to determine whether preclusive contracts limit or  
increase the quantity of sports programming telecast (Interim  
Rpt., paragraph 77, p.35)

1 its favor solely upon the hypothetical theorizing of one economist,  
2 unsupported by factual inquiry into any of the areas critical to an  
3 adequate application of the Rule of Reason. Congressional findings  
4 concerning general trends which are now obvious, due to network  
5 consolidation and the growth of the cable industry, contradict  
6 defendant's assumptions. The analysis of plaintiff's expert, Dr.  
7 Mueller, contradicts defendant's assumptions, and is moreover,  
8 based in part upon an actual market evaluation conducted by the  
9 plaintiff which likewise contradicts defendant's assumptions.  
10 Furthermore, the two purportedly undisputed material facts upon  
11 which PAC-10 rests its entire anti-trust argument are also  
12 disputed. PAC-10, therefore, cannot succeed in its contention that  
13 it is entitled to judgment as a matter of law.<sup>21</sup>

---

14  
15 <sup>21</sup> It is intriguing that although PAC-10 cites to the case  
16 of Ass'n of Independent T.V. v. College Football Ass'n,  
17 637 F.Supp. 1289 (W.D. Okl. 1986) for dicta (PAC-10  
18 Memo, p.9, 1.27 - p.10, 1.2), for language generally  
19 concerning the Rule of Reason (PAC-10 memo., p.16,  
20 11.6-15; p.17, 11.26-27), and acknowledges that the  
21 agreements at issue in that case are virtually  
22 identical to those here, defendant carefully avoids  
23 addressing the substance of the decision itself. This  
24 case indeed does involve contracts similar to those  
25 here, but it was the Association of Television  
26 Programmers who sought summary judgment (and on the  
27 higher per se standard), not the CFA. Significantly,  
28 summary judgment was denied on the grounds that  
manifold factual issues incapable of summary judgment  
existed as to the purpose and effect of the agreements,  
relevant market, market power, price-fixing, output  
restrictions, illegal market division, monopolization,  
attempt to monopolize and conspiracy to monopolize.  
Now that the shoe is on the other foot, so to speak,  
PAC-10 would have this court overlook all these areas  
of factual dispute despite their equal presence in this  
context.

1            III. DEFENDANT'S REASONING CONCERNING PLAINTIFF'S CLAIMS  
2            CONCERNING MONOPOLY RESTS UPON ITS ILL-SUPPORTED ARGUMENTS IN THE  
3            ANTI-TRUST CONTEXT

4            The thrust of all of PAC-10's monopolization arguments  
5            is that because plaintiff cannot prove an antitrust injury,  
6            plaintiff cannot pursue any claims under § 2 of the Sherman Act  
7            either. Yet, as argued above, the potential anti-competitive  
8            effect of the contract provisions at issue here have been and are  
9            of increasing concern nationwide. The market for the televising  
10           of live college football, though recognized by the Supreme Court  
11           as a unique product and market, has increasingly come under the  
12           control of ABC and its subsidiary ESPN (the only nationwide cable  
13           sports network) and a handful of cable systems. PAC-10's other  
14           contracting co-defendant, PTN, has recently purchased or merged  
15           with the Sports Channel. (Pappas Dec. II, p.3 ¶6) The  
16           interacting operation of the exclusivity windows of PAC-10's  
17           various contracts results in free over-the-air broadcasters being  
18           blocked at every turn in their attempts to fulfill their  
19           obligation to serve the public within the submarkets of their  
20           ADI's, and it is contended that this is a direct result of this  
21           increasing concentration of market power.

22           More importantly, as the Supreme court noted in  
23           Spectrum Sports, 113 S.Ct. 884, 892 (1993), "The purpose of the  
24           Act is not to protect businesses from the working of the market;  
25           it is to protect the public from the failure of the market."  
26           Plaintiff contends that the various exclusivity provisions  
27           operate to thwart viewer preference, rather than allowing the  
28           kind of head to head competition which fosters responsiveness to

1 viewer demands. Furthermore, in this unique market, the  
2 increasing control over television rights in the hands of the  
3 very few would be impossible without PAC-10's and non-defendant's  
4 co-conspirators Big 10 and CFA's involvement.

5 This is not a situation in which a producer of a  
6 fungible item, such as the economist's proverbial widget, merely  
7 elect to deal primarily with one or two large distributors at the  
8 expense of smaller, perhaps less efficient, widget distributors.  
9 In that instance the economies of scale would, theoretically,  
10 produce a lower cost widget for public consumption. Instead,  
11 PAC-10's participation in the preclusive contracts, - a  
12 participation which is admittedly to its own financial benefit  
13 (See Hansen Depo. p. 71, ll. 5-21), - operates to preclude other  
14 distinctly different "products," i.e. other games between other  
15 football teams, from ever reaching the public. Moreover, the  
16 distinct products which are prevented from ever reaching the  
17 public are products broadcasters such as the plaintiff are  
18 uniquely capable of directing to that segment of the public which  
19 would prefer such local interest games.

20 PAC-10's contention that it cannot be liable for a  
21 claim of monopolization because it does not compete with  
22 plaintiff in the purchase of television rights and distribution  
23 of programming misses the point. There would be no product and,  
24 therefore, no market, unless conferences like the PAC-10 and  
25 organizations like the CFA which control these T.V. rights of  
26 their members sold the rights to broadcasters and cablecasters.  
27 Without these T.V. rights of the PAC-10, Big-10 and CFA, Networks  
28 ABC, ESPN and PTN would have air-time, but no product.

1           If these preclusive contracts are illegal as alleged by  
2 plaintiffs, unquestionably, PAC-10 by being a party to these  
3 contracts and engaging in conduct in furtherance thereof is a  
4 participant in the monopoly or attempt to monopolize. PAC-10  
5 presents no facts to rebut the plaintiffs' allegations of market  
6 power being concentrated in the hands of ABC (ESPN) PTN, PAC-10,  
7 Big-10 and CFA who have combined to control over 80% of the  
8 market for live college football (S.A.C. ¶'s 38 and 52).  
9 Further, the non-competitive effect of these contracts is well  
10 documented by Dr. Mueller and plaintiffs' market study (Mueller  
11 Dec., Sigouras Dec., Ex.A)

#### 12                           IV. CONCLUSION

13           The Motion for Summary Judgment of Defendant PAC-10  
14 should be denied because plaintiff has raised triable issues of  
15 fact with respect to:

16           (1) The existence of enforceable contracts to televise  
17 the September 1991 games live; (2) The preclusive contracts to  
18 which PAC-10 is a party are illegal and were intended to, have  
19 interfered, continue to interfere, and threaten to interfere with  
20 the ability of plaintiff and other local broadcasters to televise  
21 games of local interest to their viewers; (3) The preclusive  
22 contracts are either "per se" illegal or they fail the "rule of  
23 reason" test because they do not achieve the purported aims  
24 enumerated by PAC-10's own expert, nor, do these contracts, on  
25 their face, pass congressional scrutiny; (4) Over 80% of the  
26 Division I-A college football market is dominated by a handful of  
27 participants, in which PAC-10 is a necessary participant for

28       ///

monopoly power to be achieved.

DATED: February 13, 1994

Respectfully submitted,

CRIFE & GRAHAM

By:

  
GARY E. CRIFE

Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the State of California, County of San Bernardino. I am over the age of 18 years and am not a party to the within action; my business address is 2436 N. Euclid Avenue, Suite 5, Upland, California 91786.

On February 14, 1994 I served the foregoing documents(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT  
PAC-10 CONFERENCE'S SUMMARY JUDGMENT MOTION

on all interested parties by placing a true copy thereof in a sealed envelope addressed as follows:

Frank Hinman, Esq.  
McCutchen, Doyle, Brown & Enersen  
Three Embarcadero Center  
San Francisco, CA 94111

Steven M. McClean, Esq.  
Thomas, Snell, Jamison, et al  
P. O. Box 1461  
Fresno, CA 93716

Timothy J. Buchanan, Esq.  
Dietrich, Glasrud & Jones  
5250 N. Palm Ave., Suite 402  
Fresno, CA 93704

Randolph D. Moss, Esq.  
Wilmer, Cutler & Pickering  
2445 "M" St. NW  
Washington D.C. 20037

(XX) BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Upland, California.

( ) BY FACSIMILE

( ) BY PERSONAL SERVICE. I caused such envelope to be delivered

by hand to the offices of the addressee.

(XX) STATE. I declare under penalty of perjury under the laws the State of California that the above is true and correct

(XX) FEDERAL. I declare that I am employed in the office of a member of the Bar of this court at whose discretion the service was made.

Dated this 14th day of February, 1994.

  
\_\_\_\_\_  
Dottie Fowler



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OFFICE OF THE SECRETARY

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CLERK, U. S. DIST. CT.  
Eastern District of CA

Gary E. Cripe, Bar No. 076154  
CRIPE & GRAHAM  
2436 N. Euclid Avenue  
Suite 5  
Upland, California 91786  
(909) 981-5212

Attorneys for Plaintiff  
PAPPAS TELECASTING, INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a,  
California corporation, and as  
Public Trustee,

Plaintiff,

v.

PRIME TICKET NETWORK, a  
California Limited Partnership,  
CVN, INC., a Corporation,  
The PACIFIC-10 CONFERENCE, a  
California Non-Profit  
Association, CAPITAL CITIES/ABC,  
INC., a Delaware Corporation,  
ESPN, INC., a Corporation,  
ABC SPORTS, INC. a New York  
Corporation, and DOES 1 through  
20, inclusive,

Defendants.

CASE NO. CV-F 92-5589-OWW

PLAINTIFF'S RESPONSE TO  
DEFENDANT PAC-10'S STATEMENT  
OF MATERIAL FACTS; PLAINTIFF'S  
SEPARATE STATEMENT OF  
ADDITIONAL MATERIAL FACTS IN  
DISPUTE

Pursuant to Local Rule 260(a), Plaintiff Pappas  
Telecasting, Inc., submits this statement in response to  
Defendant PAC-10's Statement of Material Facts and further sets  
forth additional material facts which render summary judgment in

1 this matter inappropriate.

2 A. PLAINTIFF'S STATE LAW TORT CLAIMS

3 Defendant's Asserted

4 Material Fact

5 1. No one involved in the  
6 discussions between FSU and  
7 either WSU or OSU concerning the  
8 telecasts of the 1991 football  
9 games between FSU and those PAC-  
10 10 schools lever mentioned, much  
11 less agreed, that the telecasts  
12 were to be live.

3 Plaintiff's Response and

4 Evidentiary Support

5 1. Jim Livengood  
6 ("Livengood") became Athletic  
7 Director of Washington State  
8 University ("WSU") on  
9 September 1, 1987, Deposition  
10 of Jim Livengood ("Livengood  
11 Depo"), p.7, l. 24-p.8, l.13;  
12 On September 5, 1987 KMPH did  
13 a live telecast of the  
14 football game between WSU and  
15 Fresno State University  
16 ("FSU") which originated at  
17 the home stadium of WSU and  
18 which was broadcast live by  
19 KMPH, 1987 Program log  
20 prepared by Scott Johnson  
21 ("Johnson"), attached as Ex. 1  
22 to the Declaration of Gary E.  
23 Cripe ("Cripe Dec.");  
24 Plaintiff did not pay rights  
25 fees to WSU for the rights to  
26 telecast the game live,  
27 Declaration of LeBon  
28 Abercrombie ("Abercrombie Dec.  
II"), p. 2, ¶ 3; by 1991  
Livengood had delegated the  
responsibility for making  
television arrangements for  
athletic contests, including  
home football games of WSU, to  
Harold Gibson, Assistant  
Athletic Director of WSU  
("Gibson") Livengood Depo,  
p.38, ll. 6-11; Declaration of  
Harold Gibson ("Gibson Dec.")  
in Support of Motion for  
Summary Judgment by PAC-10  
p.2, ¶ 2; Johnson, (Assistant  
Athletic Director For  
Communications and Sports  
Information at FSU,) telephoned Gibson and asked  
permission to televise the  
game between FSU and WSU on  
September 14, 1991. Gibson's  
response was "I don't see any

1 problems." Deposition of  
2 Scott Johnson ("Johnson  
3 Depo"), p.8, l.26-p. 9, l. 5;  
4 p.134, ll. 1-11; On June 26,  
5 1991 Johnson confirmed in  
6 writing to Assistant Athletic  
7 Director Gibson, permission  
8 for KMPH to televise the  
9 September 14, 1991 game  
10 between FSU and WSU and  
11 confirmed with Gibson the  
12 reciprocal waiver of rights  
13 fees for that telecast and  
14 future telecasts originating  
15 from FSU's home stadium  
16 (Gibson Dec., Ex. A); Johnson  
17 believed that he had been  
18 granted permission for KMPH to  
19 do a live telecast of the  
20 September 14, 1991 football  
21 game between FSU and WSU and  
22 so advised Plaintiff (Johnson  
23 Depo, p. 100, ll. 17-24,  
24 Abercrombie Dec. II, p. 2, ¶  
25 2); A letter dated August 15,  
26 1991 from Howard Zuckerman and  
27 Associates, Inc.  
28 ("Zuckerman"), television  
producer for KMPH, was  
received by the Athletic  
Department of WSU on, August  
19, 1991 and according to  
Livengood the letter indicated  
that KMPH intended to do a  
live broadcast of the game.  
Deposition of Harold Gibson  
("Gibson Depo"), p. 17, ll. 6-  
15 and Ex. 11; Livengood Depo,  
p. 31, l. 24-p. 32, l. 19

On September 21, 1985 and  
October 1, 1988, KMPH did live  
telecasts of the football  
games between FSU and Oregon  
State both of which were  
played at the home stadium of  
OSU (1985 and 1988 FSU  
Programming Logs, Cripe Dec.,  
Ex. 2); KMPH did not pay  
rights fees to OSU for the  
rights to telecast those games  
live, and if any rights fees  
would have been paid to OSU,  
they would have been paid by

1 KMPH ( Abercrombie Dec. II, p.  
2, ¶ 3; Johnson Depo, p. 22,  
11. 11-14); Johnson telephoned  
2 Mike Corwin ("Corwin"),  
3 Assistant Athletic Director of  
4 OSU who had extensive  
5 experience in print and  
6 electronic media, and who  
7 reported directly to the  
8 Athletic Director of OSU,  
9 Dutch Baughman ("Baughman"),  
10 and worked on direct  
11 assignments given to him by  
12 Baughman, for the purpose of  
13 arranging a KMPH telecast of  
14 the game; Corwin testified  
15 that "Scott was looking to  
16 telecast the OSU-Fresno State  
17 football game. He referred to  
18 our past relationship in doing  
19 it much along the lines that  
20 we had in the past"

(Deposition of Mike Corwin  
("Corwin Depo"), p.8, l. 23-p.  
9, l. 22, Deposition of Hal  
10 Cowan ("Cowan Depo"), p. 11,  
11. 5-23; Corwin Depo, p. 47,  
12. 8-18); Johnson sent Corwin  
13 a confirming letter dated June  
14 26, 1991 which included a  
15 reciprocal waiver of rights  
16 fees; Corwin received the  
17 letter within a day or two of  
18 June 26, 1991 (Corwin  
19 Declaration in Support of PAC-  
20 10's Motion for Summary  
21 Judgment, ("Corwin Dec.") Ex.  
22 A ; Corwin Depo, p. 44, ll.  
23 20-23 and Exhibit 4 thereto,  
24 p. 69, ll. 8-22, p. 71, l. 14-  
25 p. 72, l. 2;

26 when the Athletic Department  
27 of OSU received a letter (in  
28 mid-August, 1991) dated August  
14, 1991 there was no doubt  
that KMPH intended to do a  
live telecast of the FSU v.  
OSU game on September 21, 1991

(Deposition of Dutch  
Baughman ("Baughman Depo") Ex.  
1; Cowan Depo, p. 9, ll. 19-  
22, p. 22, ll. 5-18; p. 23,  
ll. 8-11.

1 Plaintiff has never done a  
2 delayed telecast of an FSU  
3 football game. Johnson did  
4 not do anything differently in  
5 arranging the telecast for  
6 this game in 1991 than he had  
7 done for the live telecast(s)  
8 that occurred between 1985-  
9 1990; Both Johnson and KMPH  
10 believed they had permission  
11 to do a live telecast of the  
12 game. Declaration of Lisé  
13 Markham ("Markham Dec. II"), p.  
14 2, ¶ 2; Johnson Depo, p. 26,  
15 ll. 2-6; and 10-11; Johnson  
16 Depo, p. 100, ll. 17-24;  
17 Abercrombie Dec. II, p. 2, ¶ 2.

10 Plaintiff incorporates by  
11 reference its Response and  
12 Evidentiary Support to  
13 Material Fact No. 5 in  
14 opposition to Motion for  
15 Summary Judgment by ABC.

14 2. The representatives of WSU  
15 and OSU had no reason to believe,  
16 and did not believe, that FSU  
17 wished to arrange for live  
18 telecasts; rather, they believed  
19 that FSU sought delayed  
20 telecasts.

2. Plaintiff incorporates by  
reference its Response and  
Evidentiary Support to  
Defendant's Material Fact  
Number 1.

18 **B. - PLAINTIFF'S ANTITRUST CLAIMS**

19 **Defendant's Asserted**  
20 **Material Fact**

**Plaintiff's Response and**  
**Evidentiary Support**

21 1. Pappas' antitrust claims are  
22 based on its inability to  
23 telecast, live, in the Fresno  
24 area one college football game on  
25 each of two Saturdays in 1991.

1. Objected to as an improper  
"Material Fact" because the  
asserted material fact is  
nothing more than PAC-10's  
conclusory and self-serving  
interpretation of the  
plaintiff's Second Amended  
Complaint. Plaintiff's anti-  
trust claims are based upon  
the non-competitive effect of  
the preclusive contract  
entered into by defendant ABC  
with defendant PAC-10 and non-  
defendant, co-conspirator Big-  
10; the preclusive contract

1 between defendant ABC and non-  
2 defendant, co-conspirator CFA;  
3 and the preclusive contract  
4 between the PAC-10 and PTN  
5 (and its sublicensee,  
6 defendant ESPN) which prevents  
7 games of local interest from  
8 being televised live by local,  
9 free over the air  
10 broadcasters, like plaintiff,  
11 including, without limitation,  
12 the FSU v. WSU and FSU v. OSU  
13 games in September, 1991, and  
14 the numerous other examples  
15 cited by plaintiff in the  
16 Second Amended Complaint and  
17 summarized in plaintiff's  
18 market study. Second Amended  
19 Complaint ("S.A.C."),  
20 Declaration of Dennis C.  
21 Mueller, Ph. D. ("Mueller  
22 Dec.") and Exhibits thereto;  
23 Declaration of Apostolos  
24 Sigouras ("Sigouras Dec.") and  
25 Exhibits thereto; Interim  
26 Report, In The Matter of  
27 Implementation of Section 26  
28 of the Cable Television  
Consumer Protection and  
Competition Act of 1992;  
Inquiry into Sports  
Programming Migration PP  
Docket No. 93-21, FCC 93-333,  
Cripe Dec., Ex. 3; Comments of  
INTV before FCC PP-Docket No.  
93-21, March 29, 1993; Cripe  
Dec., Ex. 4.


2. On those two Saturdays,  
sixteen live college football  
games, plus four tape-delayed  
games, were televised in the  
Fresno area. This amounted to 56  
hours of live college football.  
There were two, three, or even  
four games to choose from at  
almost all times on those two  
Saturdays.

2. Not disputed, but objected  
to as irrelevant because the  
total number of hours of  
college football available in  
the Fresno area does not  
address consumer preference or  
how many hours of college  
football, and which games,  
would have been available, but  
for, the effect of these  
preclusive contracts. S. A.  
C., Mueller Dec. and Exhibits  
thereto; Sigouras Dec. and  
Exhibits thereto; Interim  
Report, In The Matter of  
Implementation of Section 26

1 of the Cable Television  
2 Consumer Protection and  
3 Competition Act of 1992;  
4 Inquiry into Sports  
5 Programming Migration PP  
6 Docket No. 93-21, FCC 93-333;  
7 Cripe Dec., Ex. 3; Comments of  
8 INTN before FCC PP Docket No.  
9 93-21, March 29, 1993; Cripe  
10 Dec., Ex. 4.

11 DATED: February 11, 1994

12 CRIPE & GRAHAM

13  
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21  
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23  
24  
25  
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28  
BY:   
GARY E. CRIPE  
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the State of California, County of San Bernardino. I am over the age of 18 years and am not a party to the within action; my business address is 2436 N. Euclid Avenue, Suite 5, Upland, California 91786.

On February 14, 1994 I served the foregoing documents(s) described as:

PLAINTIFF'S RESPONSE TO DEFENDANT PAC-10'S STATEMENT OF MATERIAL FACTS; PLAINTIFF'S SEPARATE STATEMENT OF ADDITIONAL MATERIAL FACTS IN DISPUTE

on all interested parties by placing a true copy thereof in a sealed envelope addressed as follows:

Frank Hinman, Esq.  
McCutchen, Doyle, Brown & Enersen  
Three Embarcadero Center  
San Francisco, CA 94111

Steven M. McClean, Esq.  
Thomas, Snell, Jamison, et al  
P. O. Box 1461  
Fresno, CA 93716

Timothy J. Buchanan, Esq.  
Dietrich, Glasrud & Jones  
5250 N. Palm Ave., Suite 402  
Fresno, CA 93704

Randolph D. Moss, Esq.  
Wilmer, Cutler & Pickering  
2445 "M" St. NW  
Washington D.C. 20037

(XX) BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Upland, California.

( ) BY FACSIMILE

( ) BY PERSONAL SERVICE. I caused such envelope to be delivered

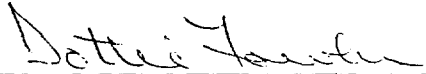


by hand to the offices of the addressee.

(XX) STATE. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(XX) FEDERAL. I declare that I am employed in the office of a member of the Bar of this court at whose discretion the service was made.

Dated this 14th day of February, 1994.

A handwritten signature in cursive script, appearing to read "Dottie Fowler", is written above a horizontal line.

Dottie Fowler

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FEDERAL BUREAU OF INVESTIGATION  
OFFICE OF THE ATTORNEY GENERAL

1 GARY E. CRIPE, ESQ.

2 BAR #076154

3 CRIPE &amp; GRAHAM

4 2436 N. Euclid Avenue

5 Suite 5

6 Upland, CA 91786

7 (909) 981-5212

8 Attorneys for Plaintiff PAPPAS TELECASTING, INC.

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA11  
12 PAPPAS TELECASTING, INC. a )  
13 California Corporation, and as )  
14 Public Trustee, )

15 Plaintiff, )

16 -vs- )

17 PRIME TICKET NETWORK, a )  
18 California Limited )  
19 Partnership, CVN, INC., a )  
20 Corporation, The PACIFIC-10 )  
21 CONFERENCE, a California non- )  
22 profit association, CAPITAL )  
23 CITIES/ABC, INC., a Delaware )  
24 Corporation, ESPN, Inc., a )  
25 Corporation, ABC SPORTS, INC., )  
26 a New York Corporation, and )  
27 DOES 1 through 20, inclusive, )

28 Defendants. )

CASE NO. CV-F-92-5589-OWW

DECLARATION OF APOSTOLOS  
SIGOURAS IN OPPOSITION  
TO THE MOTIONS FOR SUMMARY  
JUDGMENT AND/OR DISMISSAL  
FILED BY DEFENDANTSDATE: March 7, 1994  
TIME: 10:00 A.M.  
ROOM: 2

I, Apostolos Sigouras, declare and state:

1. In May of 1993 I received my M.S. degree in Industrial  
and Systems Engineering (Technical Economic Planning option) from  
the University of Southern California ("USC"). Included among my

1 course work at USC was a class entitled "Time Series Analysis"  
 2 taught by George J. Schick, Professor of Information and Operations  
 3 Management. This class focused on statistical analysis including,  
 4 Regression Analysis and Box-Jenkins Techniques, among others.  
 5 Professor Schick described me as his best student in that class. I  
 6 have been trained and I have had considerable experience using  
 7 these and other statistical analysis techniques employing Minitab  
 8 which is one of the most advanced and internationally accepted  
 9 statistical software packages. In 1991 I received my degree in  
 10 mechanical engineering from the University of Thessaloniki,  
 11 Greece, and I graduated number eight out of 175 students. I am  
 12 currently employed by Pappas Telecasting Companies as a systems  
 13 analyst.

14 2. I have also had considerable work experience in data  
 15 analysis including conducting extensive market research on the  
 16 leather industry in Greece and Europe which was published in 1991.  
 17 The extracted model was based upon more than 600 questionnaires and  
 18 tables, and was divided into separate categories for all market  
 19 levels. With the help of this model, we were able to explain the  
 20 recession (cause and effect) in the market in 1989 and 1990 and,  
 21 based upon the study, accurate predictions for the market in 1992  
 22 and 1993 were made.

23 3. At the request of Mr. Gary E. Cripe and my employer, Mr.  
 24 Harry J. Pappas, I was assigned the task of preparing a market study  
 25 with respect to college football games shown on television between  
 26 the years 1984 and 1993 in the major television markets throughout  
 27 the united States. In order to fulfill my assignment individuals  
 28 researched the back issues of the TV Guides, newspapers and other

1 stations have decreased between 1984-1993 and whether or not there  
2 is a cause and effect relationship between the decrease in the  
3 number of games shown on local television and an increase of the  
4 college football games televised by both broadcast and cable  
5 networks. To perform the analysis I utilized "Linear Regression  
6 Analysis" and "Box-Jenkins Techniques".

7 6. In summary, the data supports the following conclusion:  
8 college football games covered by local television stations are  
9 dependent upon and negatively influenced by the college football  
10 games covered by broadcast networks and cable networks including  
11 ESPN and Prime Ticket Network. In other words, an increase (through  
12 time) in the network games and games carried by cable networks such  
13 as ESPN and Prime Ticket Network has a direct negative effect on the  
14 number of games televised by local broadcast (free over the air)  
15 television stations.

16 7. The conclusions reached above are well supported by the  
17 computer model which was created and analyzed utilizing the  
18 "Minitab" software package, because:

19 (a) Standard errors and p-values are very low. Given the  
20 independent variables, we can assign roughly 95% probability  
21 that the corresponding local TV games (total for 17 TV markets)  
22 would be within plus or minus eight games of the prediction  
23 given by the model. All t-ratios that are (in absolute values)  
24 above two, show us that the related variables are substantially  
25 significant;

26 (b) While the absolute value of the t-ratio for the  
27 seasonal indicator (q1) is slightly below two, this does not  
28 affect our results, as long as it does not affect the

1 dependence of the local TV games on the cable and network  
2 games;

3 (c) The R-squared (adjusted) is very high. About 98% of  
4 the variation of the dependent variable (local TV games) has  
5 been explained by the model;

6 (d) The Durbin-Watson statistic number (equals 2.22)  
7 shows that we do not have any problems with auto-correlation;

8 (e) The Randomness Alpha Test and the normal distribution  
9 (I Chart) test shows that our dependent variable is random and  
10 normally distributed and, therefore, it is in the state of  
11 statistical control.

12 In summary, the model and its conclusion is 95% accurate within plus  
13 or minus eight games.

14 8. Attached hereto as Exhibit A is a summary of the 17  
15 markets. This summary is categorized by year from 1984 through  
16 1993. It summarizes data for network, local, cable and broadcast  
17 programmers and then presents a total number of exposures (defined  
18 as a game shown in a market). Because a single game may be shown in  
19 more than one market the numbers summarized to not equal the total  
20 number of games actually televised, but exceed the total number of  
21 games televised and, therefore, a game may be counted more than one  
22 time for the purpose of this study. Nevertheless, this does not, in  
23 any way, invalidate the conclusion of this study because the model  
24 was created to show a gross decrease in the number of exposures on  
25 local television.

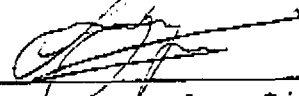
26 9. As can be seen from the summary: in 1984 there were a  
27 total of 68 local exposures, and; in 1985 the total number of local  
28 exposures increased to 115, and; in 1986 local exposures increased

1 to 120. From 1987 through and including 1993 the number of local  
2 exposures declined in each of those years from 65 in 1987 to 24 in  
3 1993. This data is graphically presented in the graph on the lower  
4 half of Exhibit A.

5 10. Each and every of the foregoing facts are known to me of  
6 my own personal knowledge except where stated upon information and  
7 belief and I could and would competently testify thereto if called  
8 as a witness here.

9 I declare under penalty of perjury under the laws of the State  
10 of California that the foregoing is true and correct.

11 EXECUTED this 11th day of February, 1994, at Visalia, California.

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14 Apostolos Sigouras  
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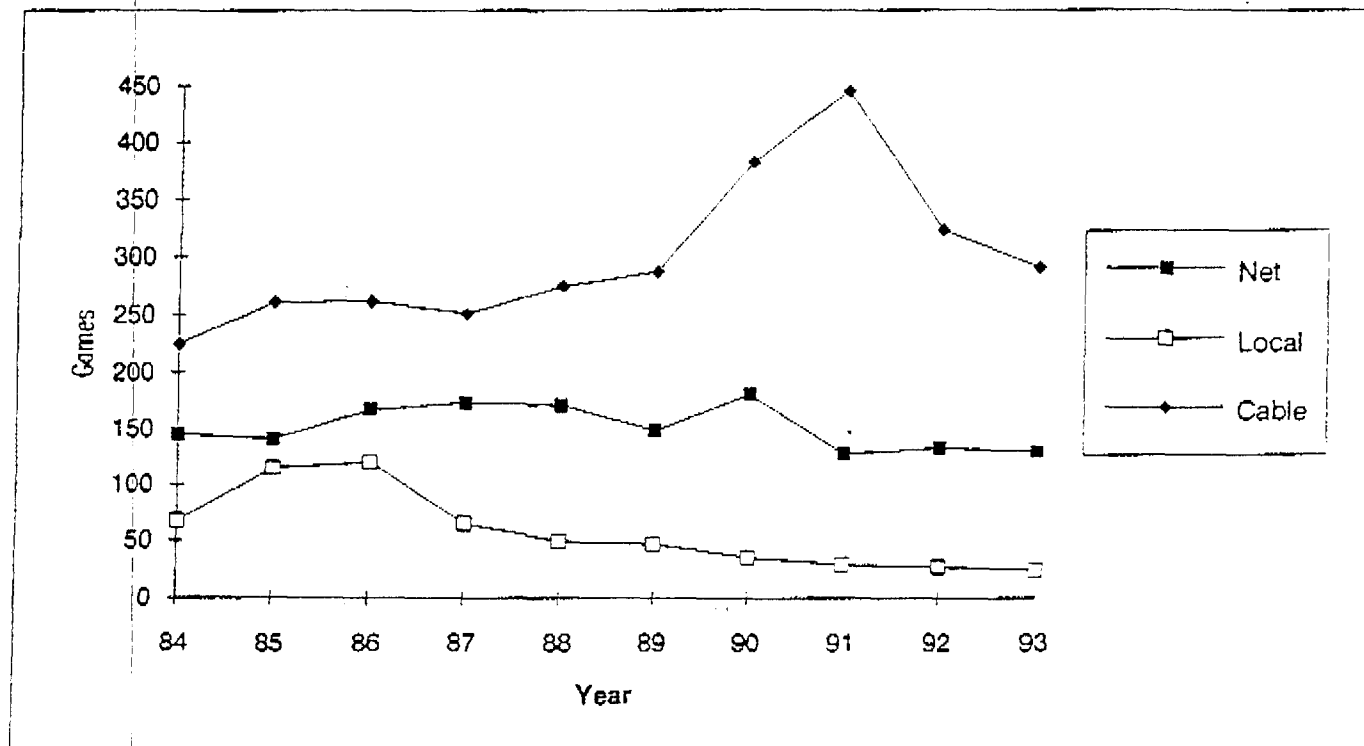
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**EXHIBIT A**

## Summary (17 Markets)

Year	Net	Local	Cable	Bdcst	Total
84	146	68	225	214	439
85	142	115	261	257	518
86	167	120	262	287	549
87	173	65	251	238	489
88	171	49	274	220	494
89	148	47	287	195	482
90	180	35	382	215	597
91	128	29	445	157	602
92	133	27	323	160	483
93	129	24	290	153	443





## PROOF OF SERVICE

## STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the State of California, County of San Bernardino. I am over the age of 18 years and am not a party to the within action; my business address is 2436 N. Euclid Avenue, Suite 5, Upland, California 91786.

On February 14, 1994 I served the foregoing documents(s) described as:

DECLARATIONS OF: DENNIS C. MUELLER, Ph.D.; HARRY J. PAPPAS; LeBON ABERCROMBIE; LISE MARKHAM AND APOSTOLOS SIGUOURAS AND EXHIBITS ATTACHED THERETO IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE DISMISSAL FILED BY DEFENDANTS THE PACIFIC-10 CONFERENCE; CAPTIAL CITIES/ABC, INC., ESPN, INC., ABC SPORTS, INC. AND PRIME TICKET NETWORK

on all interested parties by placing a true copy thereof in a sealed envelope addressed as follows:

Frank Hinman, Esq.  
McCutchen, Doyle, Brown & Enersen  
Three Embarcadero Center  
San Francisco, CA 94111

Steven M. McClean, Esq.  
Thomas, Snell, Jamison, et al  
P. O. Box 1461  
Fresno, CA 93716

Timothy J. Buchanan, Esq.  
Dietrich, Glasrud & Jones  
5250 N. Palm Ave., Suite 402  
Fresno, CA 93704

Randolph D. Moss, Esq.  
Wilmer, Cutler & Pickering  
2445 "M" St. NW  
Washington D.C. 20037

(XX) BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Upland, California.

( ) BY FACSIMILE

( ) BY PERSONAL SERVICE. I caused such envelope to be delivered